PART IV

Section 1—C + E* ordinary

GENERAL STATUTORY RULES AND STATUTORY ORDERS ISSUED BY THE CENTRAL GOVERNMENT AND ORDERS MADE BY THE PRESIDENT AND REPUBLISHED BY THE STATE GOVERNMENT.

ELECTION COMMISSION, INDIA.

NEW DELHI,
Dated the 19th August 1967.

NOTIFICATION

No. 82/MY/10/67.—In pursuance of Section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 24th July, 1967 by the High Court Mysore, Bangalore, in Election Petition No. 10 of 1967.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Dated the 24th day of July 1967.

Before

THE HON'BLE MR. JUSTICE G. K. GOVINDA BHAT.

Election Petition Number 10 of 1967

Kattimani Chandappa Jampanna,
Settlement, Hubli. ... *Petitioner.*

Vs

1. Laxman Siddappa Naik, Yeddalgudi Post, Ankalgi, Taluk Gokak.
2. Parasappa Hanmanth Karaning, Konnur, Konnur Post, Taluk Gokak.
3. Patil Shivangowd Malgowd, Gujanal village, Ankalgi Post, Taluk Gokak. ... *RESPONDENTS.*

Election Petition under sections 81, 84, 100 and 101 of the Representation of the People Act, 1951 praying that the election of the First-Respondent may be set aside and the petitioner may be declared duly elected to the Mysore Legislative Assembly and to award the costs of this Petition.

This petition coming on this 24th day of July 1967 for final disposal before the Hon'ble Mr. Justice G. K. Govinda Bhat in the presence of Sri B. Basavalingappa, Advocate for the Petitioner and Sri V. Krishnamurthy, Sri C. M. S. Desai and Sri B. B. Mandappa, Advocates for the Respondent-1.

This Court made the following ;

ORDER

In the General Elections held in February 1967, No. 192 Gokak Assembly Constituency was reserved for members of the Scheduled Tribes specified in para 2 of Part VIII of the Constitution (Scheduled Tribes) Order, 1950 hereinafter called the 'Scheduled Tribes Order'. The petitioner, Respondents 1 to 3 and two others had filed nominations for the reserved seat. The petitioner objected before the Returning Officer to the Respondents' nominations on the ground that they were not qualified to be chosen to fill the reserved seat since they were not members of any of the specified Scheduled Tribes that in fact they belonged to the 'Bedar' caste. The Returning Officer overruled the said objection and accepted the nominations of the respondents as also of one Bhimgouda Mallagouda Patil who subsequently withdrew from the contest within the time allowed under Section 37 of the Representation of the people Act, 1951, hereinafter called the 'Act'. It may be mentioned that the nomination of one other candidate viz., one Kaushalya Devi was rejected by the Returning Officer. Thus the petitioner and the respondents were the four contesting candidates in the elections held on 15th February 1967.

2. In the poll held the result of which was declared on February 22, 1967, Respondent No. 1 Laxman Siddappa Naik was declared to have been duly elected to fill the seat in the Gokak Assembly Constituency reserved for scheduled Tribes.

3 On April 7, 1967 the petitioner preferred the above Election Petition challenging the election on the ground that the

Respondents were not qualified to fill the seat reserved for the Scheduled Tribes and that the Returning Officer had impr perly and illegally accepted their nominations ; he has prayed for the relief of declaration that the election of Respondent No. 1 the returned candidate is void and further that the petitioner may be declared to have been duly elected.

4. The case of the petitioner is that Respondent No. 1 as also Respondents 2 and 3 who were the contesting candidates are not members of any of the Scheduled Tribes specified in para 2 of Part VIII of the Scheduled Tribes Order and that in fact they belonged to 'Bedar' caste which is not a Scheduled Tribe specified in the Scheduled Tribes Order. The petitioner's further case is that among the contesting candidates, he alone was the qualified candidate to fill the reserved seat and that the votes cast in favour of respondents ought to be regarded as 'thrown away' votes and consequently it should be held that in fact the petitioner received a majority of the valid votes and therefore he should be declared to have been duly elected.

5. Respondents Nos. 2 and 3 though served with notice of the Election Petition did not enter appearance, they appeared only at the stage of arguments and submitted that they do not contest the case of the petitioner that the Respondents belong to the 'Bedar' caste. Respondent No. 1 alone has contested the Election Petition. By his written statement, he has contended that he belongs to the 'Nayaka' community which according to him is one of the communities specified in the Scheduled Tribes Order and therefore he was qualified to fill the seat. With reference to the specific allegation of the petitioner that Respondents belong to the 'Bedar' caste, Respondent No. 1 has stated in his written statement that 'Nayaka' also are referred to as 'Bedars'. He has not denied that Respondents Nos. 2 and 3 are not members of the 'Bedar' caste as alleged by the petitioner and he has merely put the petitioner to proof.

6. On the pleadings, the following issues were settled :

(1) Are the Respondents 1 to 3 not members of the Tribal community specified in entry No. 13 of part VIII of the Constitution (Scheduled Tribes) Order 1950 ?

(2) If the answer to Issue No. (1) is in the affirmative, is the Election petitioner entitled to be declared as elected ?

(3) What reliefs ?

7. The petitioner examined four witnesses besides himself. Respondent No. 1 examined himself and adduced no other evidence except producing Exhibits R-1 to R-3.

8. The definite case of the First Respondent was that he belongs to the tribe specified in Entry No. 13 of the Scheduled Tribes Order. The short question for decision therefore is whether Respondent No. 1, the returned candidate, is a member of the tribes specified as 'Naikda or Nayaka' in the Scheduled Tribes Order.

9. Clause (a) of Section 5 of the Act *inter alia* provides that in the case of a seat reserved for the Scheduled Tribes of a State, a person shall not be qualified to be chosen to fill the reserved seat unless he is a member of the Scheduled Tribes of that State. A candidate to fill a seat in a reserved constituency is required to make a declaration in his nomination paper the particular tribe of which he is a member and the area in relation to which that tribe is a Scheduled Tribe of the State [*Vide* Section 33 (2) of the Act].

10. Article 342 (1) of the Constitution of India has conferred the power on the President to specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of the Constitution be deemed to be Scheduled Tribes in relation to any State or Union Territory, as the case may be. In exercise of the said power the President after consultation with the Governors of the States concerned has made the Constitution (Scheduled Tribes) Order, 1950. Paragraph 2 of the said Order states that 'the Tribes or Tribal communities, or parts of or groups within Tribes or Tribal communities specified in parts I to XIV of the Schedule to the Order shall, in relation to the States to which those parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that Schedule. Part III of the Schedule to the Order published in 1950 specified the names of 24 tribes in relation to the then state of Bombay. Entry No. 15 of Part III specified 'Naikda or Nayaka' as one of Scheduled Tribes in relation to Bombay State as existing on 26th January 1950. On the Reorganisation of States by the States Reorganisation Act, 1956, the districts of Belgaum, Bijapur, Dharwar and Kanara were included in the State of Mysore. In the year 1960 there was a further division of Bombay State into

the linguistic States of Gujarat and Maharastra. Consequent on the said reorganisation of States, the Constitution (Scheduled Tribes) Order, 1950 was amended in 1956 and 1960. As a result of the said amendments, 19 out of the 24 tribal names specified in Part III of the Scheduled Tribes Order as notified originally, were shown in para 1 of Part IV in relation to the Bombay area of Gujarat State, Part VII-A, para 1 in relation to the Bombay area of Maharastra States and para 2 of Part VIII in relation to the Bombay area of Mysore State. The names of five tribes found in the original Order were deleted and entry No. 15 in the original order specifying 'Naikda or Nayaka' has been shown at entry No. 13 in Parts IV, VII-A and VIII aforesaid. It is relevant to state that though the original order shows 'Naikda or Nayaka, as one of the Scheduled Tribes, the amended, Order given the following description of the Tribe.

"Naikda or Nayaka including Cholivala Nayaka, Kapadia Nayaka, Mota Nayaka and Nana Nayaka."

After the President has specified the Scheduled Tribes, it is only the Parliament that is competent to include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) of Article 342 of the Constitution. The Parliament by law has not made any alteration in the Scheduled Tribes Order issued by the President. Article 342 of the Constitution is in ***Parimateria*** with Article 341 which deals with Scheduled Castes by The scope of Article 341 of the Constitution has been interpreted the Supreme Court in BASAVALINGAPPA *V.* MUNI. (1) CHINNAPP and BHAIYALAL *V.* HARIKISHNA SINGH (2). In the said decisions, it has been laid down that in order to determine whether or not a particular caste is a scheduled caste within the meaning of Article 341, one has to look at the published notification issued by the President and it would not be open to any person to lead evidence to establish that any particular caste not specified in the Order is a part of the caste notified in the Order. The same principles ought to govern the scope of enquiry in relation to the Order issued under Article 342 (1) by the President.

11. P. W. 1 Bheemappa Padiappa Naik has stated that he belongs to 'Cheluvadi' caste and that members of the 'Cheluvadi'

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(1) A. I. R. 1965-SC 1269
(2) A. I. R. 1965-SC 1557

caste are also called Nayaks. P. W. 2 Laxman Narayan Naik who belongs to the Lambani caste has stated that Lambanis are also called as Nayaks. P. W. 3 Nallappa Somappa Naik who is a member of the Kuruba community has stated that one section of the Kuruba community is also called Nayaks. P. W. 4 Krishnappa Bommayya Naik stated that he belongs to the 'Naikda or Nayaka' community of North Kanara District. In his cross-examination. he admitted that he has not brought any record to show that he belongs to 'Naikda or Nayaka, community though there are about 400 people belonging to his community in Ankola. P. W. 5 who is the petitioner has stated that Respondent No. 1 and the other respondents belonging to the 'Bedar' caste, that sections of the Bedar caste are also called 'Nayaka' Makkalu' or Valmiki' or 'Talwars' P. W. 3 has also stated that Bedars' are called as 'Talwars' or Valmiki, or 'Nayaka-Makkalu.'

12. Petitioner has produced Exhibit P-1 which is a certified extract of the Births and Deaths Register of Arabhavi village in Gokak Taluk relating to the birth of a child named Anusuya on 2nd March 1952 whose father's name under Column 6 is shown as Lakshman Siddappa Naika, Yeddalagudda. Under Column 7 the caste of the child is shown as 'Bedar', Respondent No. 1 as R. W 1 has denied that Exhibit P-1 relates to his child. R. W. 1 has statad that he had no child by name Anusuya and that he has only one child alive now and that child's name is Shakuntala who was born in the year 1950 in Poona. R. W. 1 has furth stated that his two other children were, one Shivanaika born in 1952 and Lakkavva born in 1954 and both of them are not alive now. R W. 1 was not cross-examined with reference to has denial that Exhibit P-1 does not relate to him. Therefore Exhibit P-1 is of no assistance to prove the caste of Respondent No.1.

13. Petitioner has further produced Exhibit P-2, a certified extract of the School Leaving Certificate of one Lakshmappa Siddappa Naik issued by the Head Master of Ankalgi Government Primay Boys' School, Exhibit P-2 shows that one Lakshman Siddappa Naik of Bedar Caste was a student in that school from 2nd December 1943 till 9th May 1946 and when the pupil left the school, he was studying in the 7th standard. The date of birth of the pupil is shown as 6th October 1930. Respondent No. 1 has denied that Exhibit P-2 relates to him. He has also denied that he ever studied in Ankalgi Government Primary School. According to R.W. 1, he joined the Primary School at Yeddalagudda in 1938

and left the same in 1942. Apart from the fact that the petitioner has not summoned the original of Exhibit P-2 and he cannot prove Exhibit P-2 in the absence of the proof of its original, there is no evidence to establish that Exhibit P-2 relates to Respondent No. 1 or that he ever studied in the Ankalgi Government Primary School. Exhibits P-1 and P-2 are the only documents produced by the petitioner to prove that Respondent No. 1 is of the 'Bedar' caste. Since the documents have not been proved as relating to Respondent No. 1, they are of no assistance for the decision of this case.

14. Respondent No. 1 has produced Exhibit R-1, a certified extract from the Births and Deaths Register of Sulidhal village of Gokak Taluk, which shows that a male child named Lakshmya was born on 10th August 1928; the child's father's name is given as Sidda Lakkappa Yeddalagudda. R.W. 1 has stated that his father's father was Lakkappa, that his present age is 38 years and on that statement, he has not been cross-examined therefore, Exhibit R-1 can be accepted as relating to the birth of Respondent No. 1. Petitioner's learned council did not argue that Exhibit R-1 does not retate to the birth of Respondent No 1. Petitioner's learned counsel merely challenged the corrections of the entry in Column 7 under the heading 'caste'; his contention was that the entry giving the child's caste as 'Nayak' (ನಾಯಕ) was a subsequent alteration made in the original register. I summoned the original of Exhibit R-1 in order to make sure that there has been no tampering of the entry in Column 7.

The Register of Births and Deaths of Sulidhal village for the year 1928 was produced by the Tahsildar of Gokak through C. W. 1 in a sealed cover. The original register was marked Exhibit C-1. On a comparison of Exhibit R.1 with the entry in serial No. 37 in Exhibit C-1, I am satisfied that Exhibit R 1 is a correct copy. C. W. 1, a clerk in the office of the Tahsildar, Gokak, who produced Exhibit C-1, has stated that Exhibit C-1 was kept in the custody of the Tahsildar with two or three similar registers and that oridinarily Registers of Births and Deaths are kept in the custody of the Aval Kharkoon. C. W. 1 also stated that he does not know the reason why Exhibit C-1 was kept in the custody of the Tahsildar.

15. Exhibit R-3, the order of the Returning Officer makes mention of the 3rd Respondent having asked for calling certain records to show that the original rigister had been tampered.

Respondent No. 1 had produced Exhibit R-1 before the Returning Officer in support of his claim that he is a member of the 'Nayaka Tribe'. It was submitted by the learned counsel for the Petitioner that the said objection of Respondent No. 3 was to the alteration made in Exhibit C-1 under the column 'caste' with reference to entry No. 37 therein. The petitioner's learned counsel submitted that the writing under column No. 7 with respect to entry No. 37 shows signs of erasure and over-writing. I have marked that entry in red pencil. On a close examination of the writing under column 7 relating to entry No. 37 in Exhibit C-1, I find that the original entry has been erased and the word 'Nayak' (ನಾಯಕ್) is an over-writing. I noticed that the first letter of the word was originally 'ಬೆ' and that has been erased and the word 'ನಾ' has been over-written. There is no evidence as to when this erasure and over-writing was done; but the fact remains that the original entry with respect to the caste of Respondent No. 1 was shown as 'Bedar', that the word 'Bedar' was erased and over-written as 'Nayak'.

16. Exhibit C-1 shows that during the year 1928, there were 58 births and deaths in Sulidhal village and that 24 persons belonged to the 'Bedar' caste. There is no other entry apart from the over-written entry relating to Respondent No. 1 showing the caste of any person as 'Nayak'. In view of the suspicious nature of the entry in Exhibit C-1 showing the caste of Respondent No. 1 as 'Nayak', no reliance can be pleaded on Exhibit R-1 relied on by him before the Returning Officer and also in this Court in proof of his claim that he belongs to the 'Nayak' Tribe. In this Court he has not produced any other evidence in support of his claim that he belongs to 'Nayak' tribe. He has admitted in his evidence that he studied in Yeddalagudda Primary School during the years 1938 to 1942; but he has not produced his School Admission Register or his School Leaving Certificate, despite the fact that the petitioner had contended before the Returning Officer that he was not a member of the Scheduled Tribe and that in fact he is of 'Bedar' caste.

17. Respondent No. 1 has admitted in his cross-examination that his community is not called 'Naikda' but only 'Nayaka'. He has also admitted that he stated before the Returning Officer that he belongs to 'Nayaka' caste and not to 'Naikda' tribe. He has further stated that there is no 'Bedar' caste in Belgaum District

and he does not know whether 'Bedars' are called as 'Talwars' or 'Valmikis' or 'Nayaka Makkalu'. He proceeded to state:

> "The members of the Nayaka community in our District are also called as Bedars because of their profession. There is inter-marriage in the Naik community including those who profess hunting as their profession and who are called Bedars. I deny the suggestion that I am a Bedar and I have given a false declaration that I am a 'Nayaka'."

To the Court question whether he knows any community of the name 'Cholivala Nayaka', 'Kapadi Nayaka', 'Mota Nayaka' and 'Nana Nayaka', his answer was that he does not know. He also stated that there is no sub-sect in the Nayaka community. To the Court question whether in Gokak Taluk there are people called as 'Bedars', his answer was that there are such people so called by reason of their profession. Again, in answer to a Court question as to what community those Bedars belong, his answer was that they belong to 'Nayaka' caste. I put him the question whether in Bombay-Karnatak Districts apart from his community there is any other community going by the name 'Naikda or Nayaka' and his answer was that he does not know. The total population of Nayak community in Gokak Constituency according to him is about 30 to 35 thousand and the members of that community are mazdoors, wood-cutters or cultivating tenants.

18. I now refer to the relevant portions of the pleadings of Respondent No. 1 in answer to the case of the petitioner that Respondent No. 1 is not qualified to fill the reserved seat.

> "3.....It is submitted that the Respondent belongs to 'Nayaka' community which is one of the communities as contained in the Constitution (Scheduled Tribes) Order 1950. It is therefore submitted that this Respondent is entitled to be elected from the constituency reserved for Scheduled Tribes.
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> x x x x
>
> 5. It is true that Gokak Assembly Constituency was reserved for Scheduled Tribes and the candidates belonging to Scheduled Tribe community alone are entitled to contest the Assembly seat from the said constituency. This Respondent belongs to Nayaka

community which is one of the 19 communities specified in the Constitution (Scheduled Tribes) Order 1950. Therefore, it is not correct to say that this Respondent has declared in his nomination paper falsely as belonging to Nayaka tribe. It is true that an objection was taken at "the time of the scrutiny of the nomination paper *viz.*, that this Respondent does not belong to Scheduled Tribe but the Returning Officer over-ruled the objection after perusing certified copy of the birth extract produced by this Respondent and accepted the nomination of this Respondent since he belongs to Nayaka community which is one of the communities as specified in the Constitution (Scheduled Tribes) Order 1950 as amended by the Act 63 of 1956.

x x x x

11. This Respondent belongs to Nayaka community which community is specified in the Scheduled Tribes Order as such. As a matter of fact Nayaks also are referred to as Bedars. The total percentage of Scheduled Tribes population in Gokak Constituency in the last Census report is nearly 14.95 per cent, there are large number of people belonging to Nayaka community to which this Respondent belongs and as a result of which the percentage of the Scheduled Tribes in the Constituency has gone very high. It is submitted that there are hardly one or two per cent population of people belonging to the communities specified in the Constitution (Scheduled Tribes) Order, 1950, other than the Nayak community. It is therefore submitted that a very large section of the Scheduled Tribe population in the Taluk belongs to Nayaka community and no other community is meant to be included. If the people belonging to Nayaka community who are also called as Bedars are excluded, the percentage of Scheduled Tribes in the Gokak Assembly Constituency may not be even 2 to 3 per cent....."
(Underlining is mine).

19. From the pleadings and the evidence of Respondent No. 1, it is clear that his contention is that there is no caste or community by name 'Bedars' in Belgaum District but the community to which he belongs is called 'Nayaka' community and the said community is also known as 'Bedars'.

20. Exhibit C-1 shows that the evidence of Respondent No. 1 that there is no caste known as 'Bedar' caste in Belgaum District is false. Out of the 58 entries of births and deaths in Sulidhal village in the year 1928, 24 persons have given their caste as 'Bedars'. All authorities on Castes and Tribes, Government Gazetteers and Orders of Government clearly go to establish the fact that in the Districts of Bijapur, Belgaum and Dharwar in the new State of Mysore there is a caste by name 'Bedar or Berad' and that sub-sections of that caste are also called 'Talwars', 'Valmikis', Nayaka-Makkalu' and 'Nayakwadis', etc., and that there is no caste as 'Nayaka' caste who are also known as 'Bedars'.

21. Census Reports of Bombay Presidency to which I will refer in detail, clearly establish that there is a primitive tribe known as 'Naikda' in certain parts of the erstwhile Bombay State. J. H. Hutton, who was the Census Commissioner in India in 1931, in his book 'CASTE IN INDIA (Fourth Edition, 1963)' has given a Glossary of the castes in India. At page 277, 'Bedar' is described as a Kanarese fighting caste of Southern India (=Boya). In the said Glossary of castes, there is no mention of a tribe or caste by name 'Nayaka'.

22. Sri V. Krishna Murthy the learned counsel for Respondent No. 1 argued that Section 15 of the Census Act, 1948 is a bar to the Court looking into the Census Reports and placing reliance on the information contained therein. Section 15 of the Census Act reads:

> "*15. Records of census not open to inspection nor admissible in evidence.*—"No person shall have a right to inspect any book, register or record made by a Census Officer in the discharge of his duty as such or any schedule delivered under Section 10, and notwithstanding anything to the contrary in the Indian Evidence Act, 1872 no entry in any such book, register, record or schedule shall be admissible as evidence in any civil proceeding whatsoever or in any criminal proceeding other than a prosecution under this Act or any other law for any act or omission which constitutes an offence under this Act."

The first part of the Section lays down that no person shall have a right to inspect any book, register or record made by a Census Officer in the discharge of his duty as such. The second part of the said Section lays down that no entry in any such book, register or record made by a Census Officer in the discharge of his duties shall be admissible as evidence in any civil proceeding whatsoever. Section 4 of the Census Act empowers the Central Government to appoint a Census Commissioner to supervise the taking of the census throughout the area in which the census is intended to be taken and the Superintendents of Census Operations to supervise the taking of the census within the several States. The said Section also empowers the State Government to appoint persons as Census Officers to take or supervise the taking of the census within any specified local area. Section 15 says that the Records of Census made by a Census Officer shall not be open to inspection nor admissible in evidence. The reports of Census in India prior to the coming into force of the Constitution were made by the Superintendents of Census Operations for each Presidency or Province as the case may be. The said Reports are printed and published by the Government and are available for sale to the Public. The reports of Census compiled by the Superintendents of the Census operations do not fall within the scope of Section 15 of the Censns Act and therefore the Objection of the learned counsel in my opinion, is untenable

23. While Article 341 of the Constitution of India provides for specification of the names of Scheduled Castes, Article 342 provides for specifying the names of the Scheduled Tribes. The term 'Tribal peoples is a novelty in the census literature of India but it is no more than a mere substitute for the word 'Animist' formerly employed (*vide* Census of India, 1931. Vol. VIII—Part I Bombay Presidency—General Report, page 355).

24. Report of Census of India, 1911, Volume VII—Bombay, Part I contains valuable information regarding the 'Naikda' tribe also called 'Nayaks'. At page 293 of the said Report, there is the following information pertaining to 'Naikda' Tribe:

> "NAIKDAS (48258), also called Naiks, are found chiefly in the Panch Mahals, Rewa Kantha and Surat. The name Naikda or little Naik was probably given them to mark the distinction between them and the Broach Talabada Kolis who were formerly known as Naiks. The tribe is undoubtedly of primitive origin, much

mixed from various sources. In the beginning of the last century they were almost in a savage condition. caring little for the customs and usages of social life. They have since settled down as labourers and wood-cutters. A few own bullocks and ploughs, and practise fixed cultivation. Marriages are prohibited within two to seven degrees of relationship. Marriage with a father's sister's, mother's sister's and mother's brother's daughter is not allowed. Marriage with a wife's sister is allowed and brothers are allowed to marry sisters. Marriage is adult. In many cases they do not perform any marriage ceremony. If a girl reaches the age of sixteen and her parents have not betrothed her, she may go and live with any man she chooses, and if he agrees agrees to pay Rs. 17 no objection is raised. If a maid commits an indiscretion with a tribesman, she is married to the man. But if the man refuses to marry her, some four or five elders of the tribe are summoned, the man takes the girl on his lap in their presence and repeates the word 'mother' seven times. He is then suckled by the girl, and is allowed to regard her as his mother. The offer of marriage comes from the boy's father who has to pay a sum of Rs 10 to 30 to the girl's father. The binding portion of the marriage ceremony consists in the bridal pair walking four times round the sacrificial fire and in feeding each other five times with *Kansar* (a kind of sweetmeat) or rice. The remarriage of widow is permitted. A widow may marry a younger brother or any other relative of her deceased husband. Divorce is allowed. Naikdas eat all kinds of flesh including beef, large black ants, squirrels and monkeys. They do not eat the flesh of the ass, crow and snake. They are much given to mahuda spirit and at their festivals drink to excess. Bhils take water at their hands It appears from the Bombay Gazetteer that they eat with Musalmans and that a Naikda guilty of taking his meals with a Dhed, Chamar or Bhangi would be re-admitted into his tribe by giving a dinner to it. They admit members from Bhils, Kolis and other castes. ***In religion they stand on the border line between Hinduism and Animism.*** They have

taken to the worship of goddesses such as Kalika, Amba Mata and Maha Kkali. They respect the tiger and swear by its name. They have yards known as *Khatris* where rude images of deceased ancestors are installed and worshipped. They show no respect for "Brahmans and even have a saying that the death of *Tilak*-wearer is equivalent to feeding 100 persons. The dead are burnt except children under two years old, who are buried. They do not perform any memorial ceremony for the propitiation of deceased ancestors."

(Underlining is mine).

At pages 231-232 of the same Report, there is the following information regarding '*Berads*'.—

"BERADS (18i871), Bedars or Beds are found chiefly in the Belgaum, Dharwar and Bijapur Districts. The term Bed (Kan. Bedaru) seems to mean hunters from BETA (hunting). The members of the tribe call themselves Naikamakkalu, that is, chief's children. They are also known as Naikwadis, Talwars and Valmikas, the first and last of which are applied to the Ramoshis also. This and the fact that the Berads and Ramoshis follow similar occupations and have a common division named Halge, seem to show that they had a common origin but became separated by the barriers of residence and language. The connection seems to have been closed when a Dravidian tongue was spoken in the Deccan. The Berads also appear to be closely allied to the Telugu Boyas and the Tamil Vedans. All these tribes except the Ramoshis claim descent from Kanayya. According to Buchnan the Kadambas of Banawasi were Berads. History relates that after the fall of Vijayanagar the Berads plundered the town for many days. Their staunch loyalty to their chiefs won the admiration of Hyder Ali, who converted them to Islam and formed battalions of the Bedar Boyas or Chelas. Medows Taylor, in the STORY OF MY LIFE, describes the Berads as the ruling tribe, tribe in the State of Shorapur in the Nizam's Territory In the early years of British rule the Berads caused some trouble, but were reduced to order in 1820. They are still notorious as thieves and highway robbers.

Some are husbandmen, some village-watchmen or TALVARS holding free grants of land, some are PATILS, some are labourers, and a few are hunters and snarers. They have six endogamous divisions—(1) Proper, (2) Durgarmurgi, (3) Halge (4) Jas or Myasa, (5) Naikmakkalu and (6) Ramoshi—none of which eat together or inter-marry. They have several exogamous divisions known as BEDAGUS, many of which are found among the Berads of Mysore, thus showing their identity. Marriage with a sister's and mother's brother's daughter is allowed. A man may marry his wife's sister. Marriage is generally infant Girls are at times kept unmarried and dedicated to Maruti or Yallamma. They are called Basavis or Jogatis and lead immoral lives. The boy's parents have to a bride-price of Rs. 100 to the girl's parents. The essential portion of the marriage consists in throwing grains of rice over the heads of the bride and bridegroom. The marriage of widow is permitted. Divorce is allowed. Except in Bijapur, Berads eat the flesh of cows, buffaloes and pigs. They drink liquor to excess. The highest well known caste who will eat, drink or smoke with Berads is the Korava. Musalmans do not eat out of the hands of Berads, but Berads have no objection to accepting food from Musalmans. Members of higher castes, such as Kurubs, Kabbaligars, Vakkals, etc., are admitted into the tribe. The favourite deities of Berads are Durgavva, Mallikarjuna, Maruti,' Yallamma and Khandoba. Their priests are Brahmans . In some places Lingayat, Mathapatis are employed to conduct the death ceremonies. The dead are either burnt or buried. For the propitiation of deceased ancestors tribesmen are feasted on the new moon of either BHADRAPAD, ASHVIN or FALGUN. The Berads of the Sholapur district settle their social disputes at meetings of the village castemen with the most influential member as the headman who is called RAJA. Sometimes castemen from several villages assemble, such an assembly being called DAIVA. The penalties imposed on offenders are caste dinners and fines. About two years ago a Berad of Bhalvani in the Phandharpur Taluka was excommunicated for eating beef and was re-admitted on payment

of a fine of Rs. 50. The social disputes of the Berads of the Bijapur district are settled by their GURUS, of whom there are several. An appeal lies from the decision of a GURU to the head GURU who lives at Hardi, a hill village in Hungund Taluka."

A table of castes classified according to their professional occupations is given in Subsidiary Table I at page 209 of the same Report. Under the classification of cultivators, 'Berad' or 'Bedar' is one of the castes mentioned and their strength is shown as 1,84,871.

25. The Report of Census of India, 1921, Volume VIII, Bombay Presidency, Part II, contains a table of castes and tribes. At page 186 of the said Report 'Naikda' Tribe is mentioned and the locality where the said 'Naikda' Tribe inhabits is shown as Pancha Mahals, Surant District, Reva Kantha and Surat Agency. The caste 'Berad' or 'Bedar' is given in the same report at page 184 and the locality inhabited by the said caste shown are Belgaum, Bijapur, Dharwar, Kolhapur and S.M.C. States.

26. The General Report of Census of India, 1931, Volume VIII, Part I-Bombay Presidency-contains valuable information regarding Tribal Peoples. At pages 355-358, it is seen that the Government of Bombay had appointed a Committee to investigate the conditions of Depressed Classes and the Aboriginal Hill Tribes in the Presidency and the said Committee had definitely classified the following communities as Aboriginal and Hill Tribes :—

1 Adwichincher Pardhi
2 Barda
3 Bavcha
4 Bhil
5 Chodhra
6 Dhanka
7 Dhodia
8 Dubla
9 Gamit or Gamta
10 Gond
11 Katkari or Kathodi
12 Kokna
13 Koli Mahadev
14 Mavchi
15 Nayak or Naikda

16 Phanse Pardhi
17 Patelia
18 Pomla
19 Rathawa
20 Thakur
21 Tadvi Bhil
22 Valvi
23 Varli
24 Vasava

The report goes on to state that of the above 24 tribes 5 are Hindus one is a Muslim. 'Nayaka' or 'Naikda' is one of the tribes classified as aboriginal and hill tribe and according to the Census Report the members of the said tribe are not Hindus. The population of 'Nayaka' or 'Naikda' tribe in 1931 is shown at 57,247. Appendix F of the said Report gives the caste indexes in the Bombay Presidency. Under the heading Hindu Backward castes, the caste 'Berad' (Bedar, Byadar, Talwar, Walmiki, Naikmakkalu) is mentioned (*vide* page 521 of the Report). It is also seen at page 521 that 'Berads' are also known as Bedar, Byadar, Talwar, Walmiki and Nayakmakkalu. Their habitation is shown as 'Deccan'. Under the same Appendix F at page 529 of the Report the 'Naikda' community is also shown and their habitation is given as Gujarat and West Khandesh.

27. The Bombay Gazetteer relating to the Karnataka Districts *viz.*, Dharwar, Belgaum, Bijapur and Kanara published by the Government of Bombay (Kannada Edition) in 1893 shows that among the members of the Bedar caste inhabiting Bombay Karnatak area there are the following sub-divisions:

(1) Maragi Bedar,
(2) Dasa Bedar and
(3) Nayaka-Makkalu.

(*Vide* page 199 of the Bombay Karnatak Gazetteer in Kannada published by the Government of Bombay, 1893).

28. I will now refer to some of the Government Orders issued by the Government of the New State of Mysore for the purposes of Article 16 (4) of the Constitution of India. Govenrment Order No. ED 79 TGL 59 dated 22nd July 1959 fixes the percentage of posts for the socially and educationally backard communities and for Bedar caste 2.6 per cent of the posts have been reserved under the said Government Order.

Government Order No. ED 60 TGL 60 dated 9th June 1960 gives in its annexure a list of socially and educationally backward classes other than the Scheduled Castes and Scheduled Tribes. Item No. 2 of the Annexure to the said Order reads thus:

> "2. Bedaru, Nayak (Naik), Boya, Vedan, Bendar, Berad, Valmiki, Talwar, Naickmakkalu, Naikwadi, Palayagar".

Bedar caste also known as Nayak, Nayaka Makkalu etc., is listed among the socially and educationally backward classes *other than the Scheduled Castes and Scheduled Tribes.*

29. The detailed Administration Report of the Social Welfare Department for the year 1956-57 published by the Government of Mysore gives a list of other backward classes at pages 53-55. Bedar, Berad, Naika Makkalu, Nayakwadi, Valmiki are all shown among the backward classes of Bombay area of Mysore State. At page 51 of the same Report, a list of Scheduled Tribes in the districts of Belgaum, Bijapur, Dharwar and Kanara is also given and that list corresponds to the Tribes specified in part VIII of the Scheduled Tribes Order.

30. E. Thurston in his treatise 'Castes and Tribes of Southern India Volume I (A and B)', has given detailed information regarding Bedars (*vide* Volume I pages 180-209).

31. Similar information regarding the Bedar caste is contained in the Mysore Tribes and Castes, Volume II by the late H. V. Nanjundayya and Rao Bahadur L. K. Ananthakrishna Iyer 1928 Edition. (*vide* pages 197-230). It is seen from the said book that Bedars or Berads are a hunting and agricultural tribe of Mysore; the name Nayaka or Nayaka Makkalu is sometimes applied to the tribe. At page 200 of this book, it is stated that many of them are employed as village watchmen or Talaris and they are largely found in the Nizam Dominions as also in Belgaum, Bijapur and Dharwar Districts.

32. Hindu Tribes and castes, Volume II by Rev. M. A. Sherring containsthe following information regarding Bedars at page 321:

> "11. Bedar.
>
> These are in the Southern Mahratta country what the Ramisis are in the Dekhan, and the Vasis are in Northern India. They live in villages in general service as sepoys, or as cultivators and labourers. They are

also wattandars in the capacity of village Talwars, Naiks, Hallabs, Shetsannadis, and village watchmen generally; but many are nevertheless secretely gang robbers and highwaymen. They are also styled PANCH GALLA. They have yet to be properly inquired into."

33. From the foregoing Reports, Authorities and Government Orders, it is established beyond doubt that 'Naikda' is a distinct primitive tribe inhabiting Gujarat and west Khandesh area of the erstwhile Bombay State and that Bedar is distinct and separate from 'Naikda or Nayaka" tribe specified in the Scheduled Tribes Order.

34. Respondent No. 1 does not claim that he is a member of the 'Naikda' Tribe. Regarding his claim that he belongs to a community known as 'Nayaka' there is no support for the same either by way of documentary evidence or authoritative reports. As already stated by me earlier, Exhibit R-1, in so far as it gives the caste of Respondent No. 1, cannot be relied on and has to be discarded. On the basis of the admission in his pleadings and his evidence before the Court that his community is also known as 'Bedar', I hold that Respondent No. 1 is a member of the Bedar caste. Respendent Nos. 2 and 3 have not disputed the petitioner's case. Therfore, on Issue No. 1, my finding is that the Respondents are not members of the Scheduled Tribe 'Naikda or Naika' specified in Entry No. 13 in Para 2 of Part VIII of the Constitution (Scheduled Tribes) Order, 1950.

35. The next question, in view of my finding on Issue No. 1 that all the contesting candidates except the petitioner were not qualified to fill the seat in the reserved Constituency, is whether the petitioner who is the only qualified candidate among the contesting candidates, should be declared elected to the said seat?

The grounds for which a candidate other than the returned candidate may be declared to have been elected are expressly mentioned in Section 101 of the Act and under the provisions of the said Section the petitioner is entitled to a declaration that he has been duly elected only if he establishes that in fact he received a majority of the valid votes. The candidates polled the following number of votes:

Petitioner	...	Kattimani Chandappa Jampanna	620 votes

Respondent No. 1	Laxman Siddappa Naik	17,522 votes
Respondent No. 2	Parasappa Hanmantha Karaning	7,044 votes
Respondent No. 3	Patel Shivangowd Malgowd	5,996 votes

36. The respondents were duly nominated candidates and the votes cast in their favour can be rejected as invalid votes only if the petitioner establishes that the votes polled by the respondents must be regarded as 'thrownaway' votes as understood under the Election Law. [(*Vide* KESHAV LAKSHMAN *v.* Dr. DEORAO (3) and SUDHIR KUMAR *v.* ABHOY PADA (4)]. That can be done only where it is established that the electors concerned had knowledge or notice that the respondents were ineligible for filling the seat. The burden of proving that the votes cast in favour of the returned candidate and other contesting candidates are invalid is undoubtedly on the petitioner. Apart from mere allegation in the Petition, the petitioner has adduced no evidence to prove that the voters had knowledge of the fact that the Respondents were not qualified to fill the reserved seat. Therefore, the petitioner is not entitled to the declaration that he has been duly elected.

37. In view of my finding under Issue No. (1) that the returned candidate is not qualified to fill the seat reserved for members of the Scheduled Tribes, the election of Respondent No. 1 is declared void; but the claim of the petitioner to be declared elected at the election held on February 15, 1967 for the seat reserved for the members of the Scheduled Tribes from the Gokak Assembly Constituency is dismissed. Since the petitioner has substantially succeeded and he did not seriously press the relief under Issue No. (2), he is entitled to his costs from Respondent No. 1. Advocate's fee Rs. 650.

G. K. GOVINDA BHAT,
Judge,
July, 24, 1967.

(3) A. I. R. 1960 S. C. 131
(4) A. I. R. 1966 Cal. 141

"Copy"

L. KRISHNA MURTHY
II Deputy Registrar

ELECTION PETITION No. 10 OF 1967.

APPENDIX OF EVIDENCE.

1. *List of witnesses examined for the Petitioner*: Evidence Page No.,

1.	P.W. 1	Bheemappa Padiappa Naik ...	1
2.	P.W. 2	Laxman Narayan Naik ...	3
3.	P.W. 3	Mallappa Somappa Naik ...	5
4.	P.W. 4	Krishnappa Bommayya Naik ...	8
5.	P.W. 5	Kattimani Chandappa Jampanna ...	10-17

II List of witnesses examined for the Respondents:

1.	R.W. 1	Laxman Siddappa Naik ...	1-9

III. List of witnesses examined by the Court:

1.	C.W. 1	M. S. Udeshimath ...	1-3

IV. List of Exhibits marked in the case for the Petitioner:

Exhibit P-1	...	Certified extract of the births and death Register of Arabhavi village, issued by the Tahsildar, Gokak regarding the birth of a child Anusuya.
Exhibit P-2	...	Certified extract of the school leaving certificate relating to Lakshmappa Siddappa Naik.
Exhibit P-3	...	Certified extract of the school leaving certificate relating to Parasappa Hammappa Karninga.
Exhibit P-4	...	Certified extract of the school leaving certificate relating to Shivangoud *alias* Bhimgoud Mallagouda Patil.

V. List of exhibits marked in the case for the Respondents:

Exhibit R-1	...	Certified copy of the extract of the Births and Deaths Register regarding the birth of boy 'Lakshmya' issued by the Tahsildar, Gokak.
Exhibit R-2	...	Certified copy of the nomination filed by Laxman Siddappa Naik, Yeddalagudda.

Exhibit R-3 ... Decision dated 21st January 1967 of the Returning Officer, Gokak, Assembly Constituency regarding the objection of Patil Shivangouda Malgouda.

VI. List of Exhibits marked in the case by the Court

Exhibit C-1 ... Original register of Births and Deaths of Sulidhal village, Gokak Taluk produced by the Clerk of the Office of the Tahsildar, Gokak.

G. K. GOVINDA BHAT,
Election Judge.

By Order,

(Sd/-) K. S. RAJAGOPALAN,
Secretary to the Election Commission,
India.

3237
26-7-1967

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and Final Examination on 6th 7th, 8th, 9th, 10th, 11th, 13th and 14th, November 1967. The examinations will be held at the following centres, provided that sufficient number of candidates present themselves for the examinations at each of the centres:

1. Ahmedabad	2. Bangalore	3. Bombay
4. Calcutta	5. Coimbatore	6. Delhi
7. Eranakulam	8. Hyderabad	9. Indore
10. Jaipur	11. Kanpur	12. Madras
13. Madurai	14. Poona and	15. Vijayawada.

Applications for admission to these examinations are required to be made on the prescribed forms, copies of which may be obtained from the Secretary to the Council of the Institute of Chartered Accounts of India, Post Box No. 268, Indraprastha Marg, New Delhi-1. Each such application together with the necessary certificates and a demand draft or Ind a Postal Order payable at New Delhi and drawn in favour of the Secretary referred to above. for the examination fee of Rs. 30 in the case of Preliminary Examination, Rs. 55 in the case of the Intermediate Examination and Rs. 80 for admission to both the Groups or Rs. 55 for admission to one Group only of the Final Examination, must be sent so as to reach the Secretary to the Council not later than the 20th September, 1967.